GOVERNMENT OF NEWFOUNDLAND AND LABRADOR

DEPARTMENT OF DEVELOPMENT

CO-OPERATIVE LEGISLATION
POLICY DISCUSSION PAPER

DEVELOPING CO-OPERATIVE ENTREPRENEURS

C O N T E N T S

After an Introduction this Paper is divided into four Sections:

SECTION I - provides background information on the need for legislative change, some history of the current Act, and the reasons for having specific legislation for co-operatives.

SECTION II - examines the nature of co-operatives legislation and the kind of legislation that the Government thinks most suitable for Newfoundland and Labrador.

SECTION III - reviews major policy issues dealt with in this Paper.

SECTION IV - are examples of the reasoning and policy conclusions outlined in the first three parts of the Paper, discussed with reference to a statutory form of presentation and language.

What immediately follows is a topical outline of the Contents of the Policy Discussion Paper. A Detailed Table of Contents to assist with reference is found on pages 2 and 3 of this document.

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INTRODUCTION

The Government of Newfoundland and Labrador has completed an extensive review of the adequacy of the current legislation under which co-operatives and credit unions are regulated. The Government is of the view that new legislation is needed. This view is shared by the Co-operative Movement, particularly the Credit Union Sector, which has made the creation of separate credit union statutes a goal since 1980. The credit union Act issue will be dealt with by the Department of Finance.

While convinced of the requirement for new legislation, the exact format and content of a new regulatory arrangement has not, yet, been established. This Discussion Paper, with its examples of legislation, is directed to all those who might be affected by new legislation. The purpose of circulating the proposals is to solicit thorough viewpoints on the nature of and the need for new legislation. The viewpoints will be taken into account in developing the final recommendations for a new co-operatives act.

The sum of the legislative examples, accompanying each Part of this document does not constitute a Bill nor a proposed Bill. Instead, it represents the ideas, discussed in this Paper, translated into the language and style of an Act. The combination of a paper highlighting policy issues coupled with statutory language should better provide a holistic presentation for discussion purposes.

It is government's role to establish appropriate, relevant legislation for the establishment and regulation of co-operative enterprise. This is part of government's mandate to provide consumer protection regardless of the form of business providing goods and services to the public.

The Department of Development is responsible for producing the final form of draft legislation before it is submitted to the House of Assembly. The broad objective of the public legislative review process, which this Discussion Paper initiates, is to provide informed comment that should contribute to the development of enabling legislation which will foster conditions where all co-operatives in the Province can grow and compete effectively.

This Discussion Paper is designed to:

* highlight the issues which currently affect the development and operations of co-operatives in Newfoundland and Labrador; and to

* propose one set of responses to the issues, which will form the basis for consultation, before any final policy and resulting legislation is determined.

SECTION I

BACKGROUND INFORMATION

GENERAL INTRODUCTION

The Co-operative Movement has experienced a remarkable transformation in its structure, complexity and traditional nature, in the last decade. Gone are the days of the single community and the basic service focus. Co-operative enterprise now competes in the international marketplace, provides multi-service branching operations, engages in joint-venture arrangements and fosters innovative forms of co-operative entrepreneurship.

The changes have also altered the decision making processes for volunteer directors and officers, management, and members. Worker co-operatives are confronted with the challenge of being both employees and management. Continuing housing co-operative members are "landlords and tenants".

Co-operative legislation must respond to the changing face of the Co-operative Movement. The dramatic growth and sophistication of the credit union sector in recent years, alone, has necessitated the proposal of separate legislation to allow them to compete effectively in the financial marketplace.

There were early attempts, by both Government and the Co-operative Movement, to initiate a process of legislative reform. Although these efforts resulted in important and necessary amendments to the current Co-operative Societies Act (referred to in this paper as "CSA"), the accelerating growth and complexity of co-operatives and credit unions in the last ten years has permitted neither Government, nor the Movement, the time necessary to effect the necessary legislative framework.

The continued growth and, more importantly, the potential for new and innovative development, which lies ahead, demands that new and separate statutes be given a high priority, not only by Government, but by the co-operative sector as well. Accordingly, Government has produced a policy and discussion document as the first step in the legislative renewal process (the new co-operatives act will be referred to in this paper as the "CA").

HISTORY OF THE CO-OPERATIVE SOCIETIES ACT
AND
THE NEED FOR SECTOR SPECIFIC LEGISLATION

The existing regulatory legislation is the Co-operative Societies Act, Revised Statutes of Newfoundland, 1970. It is the most unique co-operative legislation in Canada. The CSA regulates all Newfoundland registered co-operatives, including credit unions. In other Canadian jurisdictions, the evolution of co-operative legislation has been toward distinct statutes to address the different requirements of credit unions and non-financial co-operatives.

The CSA was first proclaimed in 1939 by the Commission of Government. The creation of specific legislation for co-operatives was one of the major recommendations contained in The Opportunities for Co-operative Organization in Newfoundland and Labrador, a report prepared by Margaret Digby of the Horace Plunkett Foundation, Great Britain. The current legislation is similar to legislation which, during Digby's time, existed in India and the other British colonies of the early 20th century. Notwithstanding numerous amendments since 1939, the Act has remained relatively unchanged in both style and substance.

Despite its age, the CSA has not hampered the growth and development of either the co-operative or the credit union sectors. It has served this province well. Both the financial and non-financial co-operative sectors, however, have undergone remarkable growth during the last decade. They continue to grow at a rapid rate, and with the increase in services provided, and the complexities of their operations, many new issues and challenges are emerging. The CSA has not kept pace with the changes, nor can it be adapted to keep pace with the complexity that such expansion inevitably brings.

Credit unions, in particular, operate in a highly competitive and increasingly complicated, global financial market. New legislation must address these matters but also must contain the necessary safeguards to protect the legitimate interests of the members and the general public. This background and mandate have been kept uppermost in Government's mind in moving towards separate legislation for credit unions and non-financial co-operatives, and in formulating the considerations presented in this paper.

SECTION II

THE NATURE OF CO-OPERATIVE LEGISLATION

RELATIONSHIP OF LEGISLATION TO CO-OPERATIVE PRINCIPLES

The debate on the nature of the co-operative principles began well before the first membership was granted. As organizations which aspire to fulfil human desire, co-operatives, like other corporate forms, are established to achieve goals their founders and their members want to accomplish. The co-operative principles express and capture the essential nature of the methods by which these goals are to be accomplished. It is these extra-legal principles which distinguish co-operative organizations from other legal forms.

In reviewing legislation concerning co-operatives in other jurisdictions, and in reflecting upon the experiences in this Province, a number of concepts emerged as central to co-operative undertakings. In preparing this Paper, and example legislation, these concepts have not been considered as rules by which a result can be determined. Instead, they have been viewed as the climate under which particular initiatives will be brought forward. It is on this basis that the following broad statements of "principle" are put forward, against which the policies expressed in this Paper can be viewed.

- Co-operative organizations are means for the generation and use of economic power which, for the most part, is beyond what any individual could accomplish.

- The concept "one member, one vote" represents a set of related notions, that describes associations of individuals, informed as to the nature of their mutual undertakings, which they operate on a democratic basis.

- Co-operatives provide goods and services to their members, and that status is available to all who are eligible to participate and willing to undertake the responsibilities of belonging.

- Co-operatives emphasize affiliation with other associations, of similar nature, to advance, through mutual assistance, the requirements of their respective memberships and to strengthen co-operative endeavour.

The co-operative is a form of business organization with social and economic goals that differ from the more common business corporation. Central to this difference in a legal setting are the:

a. role of investment capital;

b. the handling of surplus or profits;

c. nature of shareholder voting rights.

In the co-operative, capital is invested to enable the provision of goods and services at costs that would otherwise be higher, instead of for the prospect of a speculative return by way of dividends. Surplus is distributed in relationship to the use of the co-operative by the member and not in accordance with the amount of investment. Each shareholder votes as a member with one vote, irrespective of the number of shares held.

As the manner in which these ideas are given legal expression, co-operative legislation must incorporate these considerations in such a way that those who aspire to advance their interests in this fashion are both guided and enabled.

NATURE OF REGULATOR LEGISLATION

The phrase "regulator legislation" has been chosen to describe the design that is being suggested for the CA. A corporate and regulatory statute of this kind must accommodate two distinct objectives: (1) the incorporation of qualified institutions, and (2) the regulation of their affairs in accordance with government policy. Legislation should be flexible, especially as it relates to business powers, so that co-operatives can grow under increasingly competitive conditions. This adaptability, however, must be balanced against the need to provide reasonable safeguards to the membership and the general public.

It is the position taken, in this Paper, that this requires that appropriate powers and responsibilities be clearly established for directors, officers, auditors from the perspective of the co-operative, and for the Cabinet, the Minister and the Registrar from the perspective of Government. The allocation of powers and responsibilities, as set forth in this Paper, reflect a choice which facilitates an adaptive use of regulatory power within clear legislative limits, so as to provide and maintain the balance between the legitimate needs and aspirations of co-operatives on behalf of their members, and the members and the general public as consumers. It is felt that this legislative framework can evolve with the development and expansion of non-financial co-operatives as a sector and system of member-owned co-operatives.

SECTION III
POLICY ISSUES GENERALLY

INTRODUCTION

The Co-operatives Act (CA) will represent new and significant policy initiatives both for Government and the non-financial co-operative system.

Although the Co-operative Societies Act (CSA) has remained relatively unchanged in the last twenty years, the same is not true for the co-operative sector and the structures which have evolved to satisfy its requirements. During the last two decades, we have witnessed the growth of new forms of co-operative enterprise to address the needs for housing, day care, employment and community economic development.

In 1980 there were 32 active (non-financial) co-operatives operating in the province with $15.3 million in assets and 21 thousand member/owners. Today, there are 74 co-operatives with over $76 million in assets servicing 62 thousand member/owners. This rate of growth is expected to continue for the forseeable future in all regions of the Province, but particularly so in the rural regions. There is an increasing awareness by Development Associations, community service organizations, and by all levels of government, that the co-operative mode of business enterprise is a legitimate and viable alternative to addressing economic development problems and opportunities.

It is the purpose of the policy proposals and concepts in this Discussion Paper to challenge co-operatives in Newfoundland and Labrador to adopt an aggressive and progressive approach to their future activities and to the development of co-operatives generally.

Strong enabling co-operative legislation can play an instrumental role in the growth and management of the complexities of change. While many policies raised in this Discussion Paper might appear to be new, and in some sense controversial, they reflect the directions currently in place, or being considered, in other Canadian jurisdictions, and which this Government feels best represent the interests of this province.

SHARED ISSUES AND CONSIDERATIONS

Historically, co-operatives throughout Canada have had a strong co-operative, interactive relationship at the provincial and national levels. Today's market place is so competitive, however, that co-operatives everywhere are compelled to find new ways to strengthen those bonds, if the co-operatives are to grow and survive into the twenty-first century and beyond.

Federal and provincial legislators, and regulators, are working in an increasingly collaborative way, sharing information and experiences, as attempts are made to find ways of developing legislation which have harmonious applications across the country. Co-operative central organizations have formed strong links to bring about compatible and cohesive approaches to effective co-operative regulation and development. The stability and viability of co-operatives into the next decade and century requires an effective legislative framework.

MAJOR POLICY PROPOSALS

The primary objective of the CA is to provide a contemporary and effective regulatory environment which will allow continued healthy growth for co-operatives in the Province while providing greater public protection and awareness. The intention of Government to create separate legislation for both co-operatives and credit unions is, itself, a major policy decision.

Major policies initiatives include:

* A new set of incorporation procedures consistent with practices and procedures used in other provinces, and with other Newfoundland legislation;

* The provision of increased enforcement and regulatory powers to deter unsound "co-operative" business practices;

* The provision of extensive co-operative business disclosure requirements to increase member/owner awareness;

* Increased responsibilities for directors and officers;

* Provisions for conflict of interest and related party transactions;

* Provisions for permanent risk equity and different forms of capital formation;

* Provisions for criteria and operation for new and existing co-operative incorporation; and

* Provisions for the creation of the Newfoundland and Labrador Federation of Co-operatives (and the question of compulsory membership and assessment).

These major policy matters are outlined in more detail in SECTION IV.

The creation of a separate co-operatives and credit union legislation is the most significant and important policy initiative undertaken since the CSA was first proclaimed in 1939. While the

structure, style and format of any new Act will be a significant departure from the current legislation, the challenge is to preserve the best of the past and to incorporate the finest examples from the present to enable co-operatives and credit unions and their members to build a secure future for themselves and for Newfoundland and Labrador.

SECTION IV

POLICY ISSUES SPECIFICALLY

The Co-operatives Act (CA) is intended to be a useful reference for co-operative officials, members, regulators and others with a need to refer to the statute governing the operations of co-operatives in Newfoundland and Labrador. This "ease of use" critera has had to be balanced against the necessary use of statutory language and the conventions of legal drafting, even in this "example legislation".

Part IV of this Discussion Paper has been arranged on the basis that related topics should be grouped in relation to purpose. Thus definitions and the administrative machinery associated with the operation of the responsible department of Government are put at the beginning. The next segment deals with the incorporation of a co-operative. This is followed by a number of sections dealing with operations of the co-operative, including the requirements of financial disclosure and audit.

Less frequently considered areas then follow, dealing with fundamental changes, amalgamation and then the governing sections about receivers and winding-up. Near the end of Part IV the sepecific and specialized needs of certain types of co-operative enterprise are addressed.

Finally the last portion of Part IV deals with matters of general operations, including the manner in which Regulations are brought into being as well as the transitional provisions necessary to take existing co-operatives under the CSA forward into the new situation where the CA applies.

PART 1 - GENERAL

DIVISION 1 - INTERPRETATION AND APPLICATION

Current Provisions

The CSA contains a limited number of definitions and as a result is imprecise. This makes it difficult from the co-operative perspective to determine whether compliance is properly being achieved and from Government's perspective whether there are meaningful breaches of the legislation.

New Act: Provisions and Issues

The CA should contain an extensive list of definitions used in the CA which to as great a degree as is possible have a meaning that is commonly understood by knowledgeable co-operators. Terms to be defined include Audit Committee, Body Corporate, Extra-Provincial Co-operatives, Debt Obligation, Insolvent, Member's Equity.

Topics For Discussion

It has to be determined whether the list of definitions is complete. The final form of the CA will determine the necessity for inclusion of any particular term. However, one major point of departure from the CSA is the provison for other corporate forms as members. At present, for-profit corporations cannot be members of co-operatives. The CA should remove this restriction to allow co-operatives to extend their services to incorporated businesses and allow for joint venture arrangements, as may be the case with fisheries or marketing co-operatives.

Model Statutory Language

"Co-operative" means a body corporate that:

i. is organized and operated on a co-operative basis; and

ii. is incorporated or continued pursuant to this Act;

and includes:

iii. an extra-provincial co-operative;

iv. a corporation that:

(1) has as its object the operation of any enterprise or service on a co-operative basis or on a basis that, in the opinion of the registrar, is substantially similar to a co-operative basis; and

(2) is registered under this Act;

PART 2 - ADMINISTRATION

DIVISION 1 - ADMINISTRATION

Current Provisions

The CSA only contains provisions for the appointment of a Registrar and such other staff as may be necessary for the administration of the legislation and the business of the Registrar and the Registry of Co-operative Societies.

New Act: Provisions and Issues

The CA should more clearly define the authority and the powers of both the Minister and the Registrar with respect to the administration and enforcement of the legislation. It should address the manner in which Ministerial approvals and directions are given with respect to:

* the activities of co-operatives;
* the question of confidentiality of information which is contained within the records of the Registrar and his offices:
* the public's right to inspect and access copies of information pertaining to the articles of incorporation and by-laws of co-operatives;
* the circumstances under which the Registrar may refuse access to information contained in his files;
* the manner in which reports and documents are to be filed with the office of the Registrar of Co-operatives.

Topics For Discussion

The CA should have clear guidelines for the Minister, the Registrar and his staff with respect to the formal administration of the legislation, and the receiving, recording and dissemination of information filed under the various provisions of the legislation. The intention is to provide clear direction to those responsible for the administration of the legislation and to those who file documents or who require access to information on registered co-operatives.

Model Statutory Language

Confidentiality of information

(1) Subject to this section, where the Minister or the Registrar obtains information or documents, other than registered or registrable information or documents, regarding the business or affairs of a body corporate or persons dealing with a body corporate as a result of administering or enforcing this Act, the Minister or the Corporation shall not disclose that information or provide those documents or a copy of them or disclose any information contained in, or allow access to, those documents, to any person.

(2) The Minister or the Registrar may in any manner communicate or provide information, documents or copies referred to in subsection (1) whose disclosure he or it considers to be required.

DIVISION 2 - REVIEWS AND APPEALS

Current Provisions

There are no specific or general remedy provisions within the present legislation for aggrieved parties to appeal.

New Act: Provisions and Issues

The CA should contain provisions for remedies and appeals by individuals or organizations who might disagree with the decisions and judgements rendered by the Minister and the Registrar and who may wish to have those positions reconsidered. For any party feeling aggrieved by the refusal of an application to incorporate, to commence business, or for any other provision or decision of the Registrar and the Minister, the Act should provide for an appropriate appeal procedure.

Topics For Discussion

Individuals or organizations who feel adversely affected by decisions rendered by the Minister or the Registrar, in that official's capacity of enforcing or administering the CA, should have an opportunity to appeal those decisions. The procedure for making the appeal, the time period in which the appeal review must be conducted and the basis on which further appeals may be made to the court are points for consideration.

Model Statutory Language

Interpretation

In this Part:

(a) "action" means an action pursuant to this Act;

(b) "complainant" means:

(i) a member of a co-operative;
(ii) a registered holder or beneficial owner, or a former registered holder or beneficial owner, of a security of a co-operative;

(iii) a director or an officer, or a former director or officer, of a co-operative or of any of its subsidiaries;

(iv) the registrar; or

(v) any other person who, in the opinion of the court, is a proper person to make an application pursuant to this Part.

DIVISION 3 - INVESTIGATIONS

Current Provisions

While the CSA contains provisions for audits and examinations by the Registrar, it does not adequately deal with the manner in which the courts may become involved in this activity, nor does it establish the basis upon which interested parties may appeal to the courts or to the Registrar for such investigations, nor does it outline in as much detail, as seems required, the basis for the exercise of the Registrar's powers.

New Act: Provisions and Issues

The provisions for audits and examinations required by the Minister or the Registrar should be redefined and clarified:

* Audits and examinations may be undertaken at the discretion of the Registrar or upon the application of the lesser of three hundred members or 30% of the members of the particular co-operatives to the Registrar;

* An inspection or examination may be conducted by the Registrar's staff;

* Special investigations may be directed by the court upon the application of a co-operative member, the Registrar, or some other interested person who feels that an investigation into the business activities of a co-operative may be warranted.

The Act should contain detailed provisions:

* for the manner in which the court may consider initiating a special investigation;

* on the powers of any inspector or investigator which may be appointed by the court;

* for the hearing of evidence in camera; and

* for other provisions which may be necessary for conducting an investigation.

The intention of the investigation section is to clearly define the powers of the Registrar and the court with respect to examinations and investigations and to also establish the basis upon which individuals or interested parties may request such action.

Topics For Discussion

In the drafting new co-operative legislation, other Provinces are clarifying the role of the court with respect to disputes which may arise as a result of the administration and enforcement of co-operative legislation. The CA Act should attempt to achieve some degree of consistency with other jurisdictions in this area. To alleviate resort to the courts the CA should provide clear guidelines on the powers of the Registrar to conduct audits, examinations and inspections.

Model Statutory Language

Investigations

d. A member, the registrar or any interested person may apply ex parte, or on any notice that the court may require, to the court for an order directing an investigation to be made of the co-operative and any of its subsidiary co-operatives or corporations,

i. On an application pursuant to subsection ( ), the court may order an investigation of a co-operative or of any of its affiliates where it appears to the court that:

ii. the co-operative is not fulfilling the purpose stated in its articles;

iii. the co-operative is not carrying on business in accordance with:

(1) the restrictions contained in its articles; or

(2) this Act, the regulations or the bylaws;

iv. the co-operative is not organized or being operated on a co-operative basis;

v. the business of the co-operative or any of its subsidiaries is or has been carried on with intent to defraud any person;

vi. the business or affairs of the co-operative or any of its subsidiaries are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interest of a member or security holder;

vii. the co-operative or any of its subsidiaries was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or

viii. persons concerned with the formation, business or affairs of the co-operative or any of its subsidiaries have acted fraudulently or dishonestly, in connection with the co-operative,

ix. An applicant for an order pursuant to this section is not required to give security for costs,

x. An ex parte application pursuant to this section shall be heard in camera,

xi. No persons may publish anything relating to ex parte proceedings conducted pursuant to this section other than with the authorization of the court or the written consent of the co-operative being investigated.

DIVISION 4 - OFFENSES

Current Provisions

Every registered society, officer or member of a society, or other person guilty of an offence under this section shall be liable, upon summary conviction, to a fine not exceeding $5,000 in the case of an individual and $25,000 in the case of a registered society.

New Act: Provisions and Issues

Offenses under the new Act should be expanded to include:

* Greater fines (of up to $5,000 for an individual, $50,000 for a person other than an individual) and possible imprisonment for conviction of offenses;

* Orders of compliance by the court;

* A limitation period of five years from the commission of an offence;

* Ministerial Cease and Desist order powers for instances where the actions of a co-operative may be in serious contravention of the Act.

Topics For Discussion

The CA is inadequate in this area as it does not provide sufficient deterrents to contravention of the legislation, nor does it provide for clear directions to the court or to the Minister and Registrar to facilitate fair and consistent decisions respecting compliance with the legislation. The CA must be very clear with respect to any offenses against it and it must establish reasonable deterrents to offenses.

Model Statutory Language

Offences with respect to reports

a. A person who makes or assists in making a report, return, notice or other document required in this Act or the regulations to be sent to the registrar or to any other person that:

   i. contains an untrue statement of a material fact; or

   ii. omits to state a material fact required in the report or necessary to make a statement contained in the report not misleading in the light of the circumstances in which it was made;

   is guilty of an offence and liable on summary conviction:

   iii. in the case of an individual, to a fine not greater than $5,000 or to imprisonment for a term not greater than six months or to both such fine and imprisonment;

   iv. in the case of a person other than an individual, to a fine not greater than $50,000;

b. Where the person guilty of an offence under subsection (a) is a body corporate and whether or not the body corporate has been prosecuted or convicted, any director or officer of the body corporate who knowingly authorizes, permits or acquiesces in the offence is also guilty of an offence and liable on summary conviction to a fine of not more than $5,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment,

c. No person is guilty of an offence pursuant to subsection ( ) or ( ) where the untrue statement or omission:

   i. was unknown to him; and

   ii. in the exercise of reasonable diligence, could not have been known to him.

PART 3 - CONTINUANCE, INCORPORATION AND COMMENCEMENT OF BUSINESS

DIVISION 1 - CONTINUANCE OF EXISTING CO-OPERATIVES

Current Provisions

Because the current Act is the first piece of co-operative legislation in this province, no provisions for continuance are included.

New Act: Provisions and Issues

The CA should have a provision to allow co-operatives, previously incorporated under the CSA, to continue with full status under the CA. Co-operatives should be given a period of two years, from the day on which the CA becomes law, to file appropriate documents requesting a continuance under the CA.

Topics For Discussion

This provision is necessary because there has to be a process for existing co-operatives to continue their corporate standing under the CA.

Model Statutory Language

Continuance

1. a. Existing co-operatives continue to be incorporated co-operatives under and subject to this Act, with articles and under a certificate of continuance.

   b. Where a co-operative is continued pursuant to subsection (a) and has articles and bylaws that are inconsistent with this Act, those bylaws are deemed to be valid until the expiration of two years from the day this Act comes into force or until the co-operative passes new articles or new bylaws, whichever occurs first.

DIVISION 2 - INCORPORATION OF NEW CO-OPERATIVES

Current Provisions

The current Act requires a minimum of five individuals for incorporation, and there are no provisions for the filing of business plans or other specified documentation.

New Act: Provisions and Issues

The general provisions for incorporation of new co-operatives should be standardized, however, the number of individuals required to file for incorporation should reflect the type of co-operative to be incorporated. Three may be acceptable for a workers co-operative while fifty or more may be acceptable for a consumers co-operative. The incorporating document should also have to include, though not exclusively, a copy of the co-operative's business plan.

Topics For Discussion

Since the CSA also deals with a variety of forms of co-operative enterprise the requirements of five people for incorporation is currently more appropriate to worker co-operatives and housing co-operatives. With some types of co-operatives (e.g., consumer), however, there is a strong argument that due to the nature of its business activities, the founding membership base should be larger.

Once incorporation is granted under the CSA the co-operative is automatically authorized to commence its business activities. This should no longer be the case under the CA.

Model Statutory Language

Application to incorporate

a. Subject to subsection ( ), not less than six persons may apply for incorporation as a co-operative.

b. The incorporators shall apply for incorporation by sending to the registrar:

i. the articles of incorporation in the prescribed form;

ii. the bylaws of the co-operative;

iii. the prescribed fee; and

iv. any information, in addition to that mentioned in clauses (a) to (c), that the registrar may require.

c. The articles of incorporation must be accompanied by

i. a copy, subscribed by all the incorporators, of the proposed by-laws,

ii. an affidavit verifying the signatures of all persons subscribing the articles of incorporation and by-laws and the fact that all those persons satisfy the qualifications specified in section ( ),

iii. a notice that contains the full name and residential address of each of the proposed first directors,

iv. a name search report in the form prescribed by the Registrar respecting the name proposed for the co-operative, dated not more than 90 days before the provision of the report to the Registrar,

v. a notice containing the address of the proposed registered office, and

vi. a business plan.

d. The registrar may allow three or more persons to apply for incorporation as a co-operative where he considers it appropriate.

e. An individual is not eligible to be an incorporator of a co-operative where he:

i. is less than 18 years of age; or

ii. is of unsound mind and has been so found by a court in Canada or elsewhere.

f. A person is not eligible to be an incorporator of a co-operative where he has the status of a bankrupt.

DIVISION 3 - COMMENCEMENT OF BUSINESS

Current Provisions

On incorporation under the CSA a co-operative is entitled to commence its business activities.

New Act: Provisions and Issues

New legislation should address the need to separate the criteria for the incorporation of a co-operative from the criteria for the commencement of co-operative business. Under the new Act a newly incorporated co-operative should not be permitted to commence business until it has submitted a business plan to the Registrar. The Registrar should only approve the commencement of business as long as the Registrar is satisfied that the operations will be viable and that the co-operatve has demonstrated its capacity for the effective management and direction of its business and affairs.

Topics For Discussion

New groups seeking incorporation as a co-operative argue that they need that registration to legitimize itself to potential members and the community it hopes to serve. They may also require the legal capacity, which registration gives them, to raise necessary member capital that is needed for the start-up of business operations.

The separation of incorporation and the commencement of business criterion should also safeguard the image of existing co-operatives by ensuring new co-operative start-ups do so on a sound business basis.

Model Statutory Language

Requirements for commencing business

a. i. Subject to subsection ( ), a co-operative incorporated under Division 2 shall not commence business until the Registrar has approved the commencement of business by it.

ii. The Registrar shall not approve the commencement of business unless

(1) the co-operative has submitted to him any changes made by it to its business plan,

(2) the co-operative has demonstrated evidence of its capacity for effective management and direction of its business and affairs,

(3) the certificate of incorporation has not been procured by the fraud or misrepresentation of any person,

(4) the co-operative will not be used for an illegal purpose, and

(5) the co-operative will fulfil the purposes and mode of operation of a co-operative generally under section ( ).

iii. Subsection (1) does not prohibit the carrying on of such business as is necessary to enable the co-operative to meet the requirements of subsection (2).

PART 4 - OPERATIONS

GENERAL COMMENTS

The introductory comments to this discussion paper noted that the style, format, and structure of the CA would be significantly different from the CSA. Part 4 of the example legislation concerning itself with Operations is evidence that many of the provisions contained within existing co-operative constitutions and the CSA Regulations should be embodied within the Act itself, e.g., provisions for Annual and General Membership Meetings, duties and responsibilities of Directors, Committees, etc.

Since most standards and conditions of operation are similar for all co-operatives, the practice in other jurisdictions is to provide for such common matters in the CA. The various Acts then make provision for the adoption of specific by-laws for things which are not covered specifically within the legislation or for which particular provison is desired by a co-operative. Part 7 of the CA also provides for the special requirements of particular co-operatives which have standards common within each type (e.g., consumer, housing, etc.).

DIVISION 1 - ORGANIZATION AND STRUCTURE

Current Provisions

While the CSA has provisions for most of these issues, either in the Act or the Regulations and constitutions, the CA should address these issues in a more comprehensive manner.

New Act: Provisions and Issues

The new CA should contain provisions for:

* The essential features of a co-operative including a definition of co-operative basis;

* The use and change of corporate names;

* Records which must be maintained by co-operative;

* The examination of documents by members;

* Maintenance of membership lists;

* The seal, financial year and annual returns;

* The capacity and powers of a co-operative; and

* General business restrictions.

Topics For Discussion

No particular points.

Model Statutory Language

Name of co-operative

a. Subject to this section, a co-operative may not have a name

   i. that is the subject of any prohibitions, or that does not meet the requirements, prescribed by the Registrar,

   ii. that is identical to the name of a corporation or other organization appearing on an applicable name search report referred to in section ( ),

   iii. that so nearly resembles the name of any such corporation or organization that, in the opinion of the Registrar, the use of that name would or might be deceiving or misleading to persons dealing with the co-operative or the other entity, or

   iv. that is otherwise objectionable on grounds of public policy as determined by the Registrar in accoradnace with Regulations.

b. A co-operative must have the phrase "co-operative" or as part of its name.

DIVISION 2 - FINANCE

Current Provisions

The CSA makes provisions for only one form of share capital which is at risk. There is no requirement to eliminate deficits before distribution of surplus to members. The only requirement is that a dividend cannot be paid which might create or increase a deficit. There is also no reference in the Act regarding the payment of dividends if a co-operative is deemed to be financially insolvent.

New Act: Provisions and Issues

The CA should allow for the capitalization of co-operatives through the issuing of different classes of shares (common shares, preferred shares, etc.). Each class of share should have its own rights and privileges. These share options should encourage the creation of pure risk capital or equity shares, which will not be covered by any form of deposit insurance or guarantee, but will qualify as equity for financial statement disclosures.

Under the CA, surplus earnings, in any year, are to be allocated to the retirement of deficits and to reserves **before distribution to members**. The Act should also stipulate that there will be no payments of dividends if the co-operative is deemed to be insolvent.

Topics For Discussion

This is an important area for discussion and a domain about which the general co-operative community has no common position. A number of questions require clear answers:

1. Should there be a provision for different classes or kinds of share capital in co-operatives as a means of financing their operations?

2. Is it necessary to eliminate deficits before any provision is made for allocation of surplus to the members?

3. Should dividends be permitted to be issued in the case where a co-operative is insolvent or if it appears as if the payment of a dividend might place the co-operative in an insolvency position?

There is a growing concern among co-operative organizations in Canada over the lack of adequate members equity and reserves in co-operatives. Consequently, there is a move towards creating larger member committment through higher equity capital.

Model Statutory Language

Shares

1. Shares of a co-operative are required:

   (a) subject to the bylaws, to be in registered form; and

   (b) to have a par value fixed in the articles.

2. Where a co-operative has only one class of shares, the rights of the holders of those shares are equal in all respects.

DIVISION 3 - SHARE CERTIFICATES, MEMBERSHIPS AND TRANSFERS

Current Provisions

There are no provisions in the CSA for the issuance of share certificates.

New Act: Provisions and Issues

On request and without charge, every co-operative shareholder should be entitled to a share certificate duly authorized by officers of the co-operative. The certificates should be issued as evidence of the title of the shareholder to shares mentioned in the certificate.

Topics For Discussion

Where there may be more than one class of shares, it may be appropriate to provide for the issuance of certificates which should address the preferences, rights, conditions, restrictions, limitations or prohibitions attached to the particular class of shares.

Model Statutory Language

Share certificates

a. Subject to subsections ( ) and ( ), every shareholder of a co-operative is, on request and without charge, entitled to a certificate, signed by the proper officers of the co-operative, stating the number of shares held by him and the amount paid on those shares.

b. With respect to a share held jointly by two or more persons, the co-operative is not required to issue more than one certificate, and delivery of a certificate for a share to one joint shareholder is sufficient delivery to all.

c. A co-operative may by bylaw provide that the signatures of the officers designated to sign share certificates may be engraved, lithographed or otherwise mechanically reproduced on the share certificates and, in that event, share certificates so signed are deemed to have been manually signed by those officers and are as valid as if they had been manually signed.

d. A share certificate is evidence of the title of the shareholder to the shares mentioned in the certificate.

e. Where a co-operative has more than one class of shares:

i. the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to any class of shares are required to be stated in legible characters:

(1) on every share certificate representing that class of shares; or

(2) by a written statement permanently affixed to the share certificate; or

ii. a statement that there are preferences, rights, conditions, restrictions, limitations or prohibitions attached to the class of shares and that the full text of those preferences, rights, conditions, restrictions, limitations or prohibitions is obtainable on request and without fee from the secretary of the co-operative is required to be inscribed in legible characters on each share certificate representing that class of shares.

f. Where the statement mentioned in clause ( ) is inscribed on share certificates of a co-operative, the secretary of the co-operative shall furnish to any shareholder, on request and without charge, the full text of any preferences, rights, conditions, restrictions, limitations or prohibitions attached to the class of shares.

g. The bylaws may provide that a co-operative is not required to issue share certificates with respect to common shares, and, in that case:

i. the share register kept by the co-operative pursuant to subsection ( ) is evidence of the number of shares held by each member; and

ii. where requested in writing by a member, the co-operative shall provide a statement to the member showing the interest of the member in the co-operative.

DIVISION 4 - GENERAL MEETINGS AND MEMBERSHIP

Current Provisions

The CSA deals with membership meetings and voting privileges in the constitution and the Regulations. Under a CA regime it is proposed to put these matters in the legislation. There are no provisions within current legislation for delegate structures and the ability to hold regional meetings for larger co-operatives.

New Act: Provisions and Issues

The manner in which membership meetings -- whether general or otherwise -- are to be held and conducted should be dealt with in a comprehensive fashion under the new Act. The CA should allow for the provision of special co-operative membership meetings called by either the auditors, the Board of Directors or the Registrar of Co-operatives.

For large co-operatives with a geographically disbursed membership, the Act should provide for a delegate system or structure and allow the holding of annual general and special meetings on a regional basis. There should be detailed references to the qualifications and restrictions associated with membership and the voting rights and procedures for all general or special membership meetings.

Topics For Discussion

For some Newfoundland and Labrador co-operatives a single annual or general membership meeting does not adequately facilitate democratic governance. It has been suggested in the past that there should be a procedure in place for either a delegate system or for the holding of meetings on a regional basis.

Are there any circumstances which might necessitate the auditors of the co-operative, or the Registrar, calling a special meeting of the members to discuss issues of importance to the financial and organizational stability of their co-operative?

Model Statutory Language

Regionalization of meetings

a. i. A co-operative may by by-law divide the territory in Newfoundland in which it carries on business and has members into regions for the purpose of holding separate general meetings in each region for the members who reside or have accounts in that region instead of holding 1 general meeting for all its members.

ii. Subject to this section, where a by-law under subsection ( ) is in force, the provisions of this Part and any other law applicable to general meetings apply to regional meetings held under this section.

iii. A resolution presented at regional meetings is passed by the co-operative only if the resolution

(1) is presented at regional meetings covering all the territory referred to in subsection ( ), and

(2) receives the approval, over all the regional meetings taken as a whole, of such aggregate majority of the aggregate votes validly cast at all the regional meetings as would suffice to carry the resolution at a single general meeting of the whole co-operative.

iv. The by-laws must provide for the procedures, if any, specific to regional meetings that must be followed.

DIVISION 5 - DIRECTORS, OFFICERS AND EMPLOYEES

Current Provisions

Co-operative constitutions require a person to be a member in good standing and not to be in arrears on any payment due to the co-operative. There are no other conditions or qualifications beyond those. The CSA does not allow for remuneration of Directors except to compensate Directors or officers for actual out-of-pocket expenses incurred conducting authorized business of the co-operative.

New Act: Provisions and Issues

The CA should make specific reference to the qualifications required for individuals to serve on a co-operative's Board of Directors. At a minimum, those qualifications should address such issues as:

* mental capacity;

* indictable offence convictions;

* personal bankruptcy position of the person seeking office;

The intent of these provisions is to remove any doubt about an individual's qualifications for office. Provision should also be made for the remuneration of Directors with respect to their duties and functions as a Director or officer of the co-operative. The specifics associated with the remuneration should be determined by each co-operative and should be covered in its own by-laws as approved by the members within a general membership meeting.

Topics For Discussion

1. Are there any conditions, beyond those already contained in existing legislation, which should prevent or disqualify individuals from serving as a director or officer of a co-operative?

2. If a person is employed in another province, should that person be entitled to serve on the Board of Directors of a co-operative in Newfoundland and Labrador?

3. Should anyone be entitled to hold office as a Director or officer in more than one co-operative.

While the importance and essential features of voluntarism within the co-operatve system must be recognized and maintained, it is common practice in our society that provisions be made for some remuneration to volunteer Directors and officers in recognition of the own time and effort contributed to making the organization successful. Should the CA contain such a provision?

Model Statutory Language

Remuneration of directors and non-employee officers

a. i. In this section, "officers" means officers of a corporation who are not employees of it.

ii. A co-operative shall make by-laws with respect to the provision of remuneration by it to its directors and officers, including the procedures for fixing the amount of that remuneration.

iii. Subject to the by-laws, a co-operative may provide remuneration to its directors and officers.

iv. A co-operative shall not provide any perquisite, benefit or advantage to a director or officer of another co-operative or its subsidiary that is not enjoyed by or available to the members of the first-mentioned co-operative generally or a substantial proportion of its membership.

DIVISION 6 - DUTIES AND LIABILITIES OF DIRECTORS, OFFICERS AND EMPLOYEES

Current Provisions

The CSA has no specific references to the liability of Directors, indemnification, misuse of confidential information or similar options. General reference is made to the holding of meetings and the general duties and responsibilities of Directors and officers.

New Act: Provisions and Issues

Detailed attention should be given to the performance and responsibilities of Directors and officers respecting their liability for actions and decisions taken on behalf of the co-operatives. Directors and officers should be required to exercise due care and diligence in performing their duties and individuals should be held liable for decisions which contravene the CA and the by-laws under the CA, in conditions specified either in the statute or at law.

Correponding to an increased responsibility for directors and officers should be provisons regarding indemnification where those individuals have acted honestly and in good faith and have made decisions in the best interests of the co-operative. Other provisions should be made for:

* the holding of meetings by telephone or teleconferencing;

* the conditions and requirements for meetings of Boards of Directors;

* the conditions and requirements for the removal of Directors;

* the misuse of confidential information and subsequent liability associated with it.

Topics For Discussion

The liability of volunteer co-operative Directors and officers is widely discussed and debated. Under recently enacted corporate statutes the courts usually require individuals, in such capacities, "to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances".

1. Should legislation contain specific and detailed references on how Directors and officers should conduct themselves on behalf of their co-operatives and, thereby, give the courts a better point of reference in their judgements?

2. Should legislation make provision for the indemnification of directors and officers from legal action where they believe their actions to have been in the best interests of the co-operative? Should concern be expressed in legislation over the misuse or potential misuse of confidential information, particularly in community based co-operatives?

Model Statutory Language

Duty of care of directors and officers

a. i. A director or officer of a co-operative, in exercising his powers and performing his duties, shall

(1) act honestly, in good faith and with a view to the best interests of the co-operative as a whole,

(2) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, and

(3) comply with the articles and by-laws.

ii. In considering whether a particular transaction or course of action is in the best interests of the co-operative as a whole, a director or officer shall also have due regard to the interests of all customers who have deposits with it.

Liability of directors

a. i. Where the board of a co-operative passes a resolution authorizing

(1) the provision of any remuneration in contravention of section ( ) or the by-laws made under that section,

(2) the payment of an indemnity described in section ( ) in contravention of that section,

(3) an acquisition or redemption of common shares in contravention of section ( ),

(4) any use of retained earnings that contravenes section ( ) or a payment of a dividend or patronage rebate contrary to section ( ),

(5) any illegal act with respect to the payment of compensation to a member, director or officer the effect of which is to reduce the aggregate or any part of its members' equity, or

the directors who voted for or consented to the resolution are jointly and severally liable to restore to the co-operative any amount so paid and the value of any property so provided or distributed and not otherwise recovered by the co-operative, with interest at the rate prescribed by the Minister.

ii. A director who has satisfied a judgment rendered under this section is entitled to contribution from all other directors who by virtue of subsection () are also liable.

iii. On an application by the co-operative, by a director who is liable under subsection ( ), by a member or by any person who was a customer or creditor of the co-operative at the time of the action complained of, the Court may make an order, if it considers it equitable to do so,

(1) to compel a recipient to restore to the co-operative any money or other property that was improperly paid, provided or distributed to him in connection with any of the circumstances specified in subsection ( ) to ( ),

(2) to compel the co-operative to return common shares to a person from whom it has improperly acquired them or to issue common shares to a person whose shares it has improperly redeemed and cancelled, or

(3) to make such other provision as it considers fit.

iv. A director is not liable under this section if

(1) he proves that he did not know and could not reasonably have known that the facts underlying the act authorized by the resolution were such as to occasion a contravention of the relevant enactment, or

(2) he relies in good faith on

(a) financial statements of the co-operative represented by any of its officers qualified to make such a representation or in a written report of its auditor as reflecting fairly the financial condition of the co-operative, or

(b) the written opinion or report of any of its professional advisers or officers qualified to give such an opinion or to make such a report.

v. An action to enforce any liability imposed by this section may not be commenced after 2 years from the date of the resolution authorizing the action complained of.

DIVISION 7 - COMMITTEES

Current Provisions

The CSA has no requirement for the appointment of internal Audit or Finance Committees.

New Act: Provisions and Issues

Co-operative Boards of Directors should be delegated the responsibility for the appointment of Committees and the Board should be required to appoint an internal Audit Committee and a Finance Committee. In circumstances where the co-operative Board may be authorized to perform those committee functions, small co-operatives may be exempted from appointing committees. The Audit and Finance Committees should be responsible for monitoring the financial management of the co-operative, including:

* the budget;

* the business performance;

* make recommendations to the Board on sound business practices; and

* communicating with the external auditors.

These committees, as with all co-operative committees appointed by the Board, should be responsible to the Board, and should have the capacity to report their findings at the co-operative's Annual General Meeting.

Topics For Discussion

Is there any real need for internal audit finance committees to perform a 'watchdog' role for the Board and membership?

Model Statutory Language

General committee provisions

a. i. Each of the committees is a committee of, and is responsible to, the board, and shall provide a written report of matters falling within its functions and duties

(1) to the annual general meeting, in respect of the previous fiscal year's business and affairs, and

(2) to the board,

(a) at least once a month, in the case of the credit committee, and

(b) at least once a quarter, in the case of the audit and finance committees,

in respect of the business and affairs of the previous period.

ii. Notwithstanding anything in this Part, the board itself is, without delegation, responsible for ensuring that the committees perform their respective functions and duties and may assume to itself any of those functions or duties and exercise any of the committees' powers.

iii. The by-laws may provide for the delegation by a committee to a committee member or officer of any of its powers, duties or functions, other than those prescribed, but no such delegation relieves a committee or the board from any duty that it has under this Act or the regulations.

iv. The requirements of subsection (1) for a written report are met, in the case of reporting to the board, if the minutes of the relevant committee meetings are provided.

Functions of the audit committee

b. A co-operative's audit committee shall perform the following functions:

i. review the annual audited financial statements before they are approved by the board and make such recommendations on them to the board as the committee considers appropriate;

ii. review and make recommendations to the board on

(1) the appointment and remuneration of the auditor and the internal auditor, and

(2) the methods and scope of conducting audits to be adopted by the internal auditor;

(3) review with the auditor the scope of an audit before he commences the audit;

(4) review any management letters, recommendations and reports prepared by the auditor or the internal auditor respecting the co-operative's business or financial statements, and make recommendations to the board thereon;

(5) review all financial reports that are to be provided under section ( ) before they are provided, to ensure that they are complete and accurate;

(6) recommend, for approval by the board, arrangements to safeguard the co-operative's assets, to ensure the timeliness, accuracy and reliability of accounting data, to promote operational efficiency and maintain adherence to the board's policies and to provide for any other matters relating to the co-operative's financial policies;

(7) report to the board any significant changes in the accounting principles and practices followed by the co-operative;

(8) ensure that any recommendations of the auditor receive the attention of the board;

(9) perform such other duties as are provided for in this Division or prescribed by the Registrar or assigned to it by a board

DIVISION 8 - FINANCIAL DISCLOSURE, AUDIT AND EXAMINATION

(A) - FINANCIAL DISCLOSERS

Current Provisions

The CSA allows up to four months, after the end of the fiscal year, for the filing of financial statements and other returns. There are no requirements for the filing of management letters by the external auditors, nor are there requirements for disclosure of any payments to Directors and officers.

New Act: Provisions and Issues

Co-operatives should be required to file their annual audited financial statements, including a copy of the management letter, to the Registrar within ninety (90) days from their fiscal year end. A co-operative's annual financial statement should be required to show (as a notation to the statement) the aggregate amount of remuneration or reimbursement for expenses incurred and paid to Directors and officers who are non-employees.

Topics For Discussion

In recognizing the member's inherent right to information on the business activities and soundness of their co-operative, what kinds of financial disclosure requirements should be incorporated into the legislation?

Model Statutory Language

Provision of financial statements, etc., to annual general meeting

a. i. At each annual general meeting, the board of a co-operative shall place before the members, in addition to any other information required by this Act or prescribed to be required,

(1) except in the case of a small co-operative that does not have an auditor, the annual financial statements for the previous fiscal year of the co-operative with the auditor's report thereon, and

(2) in the case of a small co-operative that does not have an auditor, the unaudited annual financial statements for the previous fiscal year of the co-operative.

ii. Where, as a result of the application of section (), the financial statements required by subsection ( ) would be on a basis that consolidates the financial statements with those of the co-operative's subsidiaries, subsection (1) shall be treated as also requiring separate financial statements for the co-operative.

iii. The annual financial statements must show, as notations to them,

(1) separately in respect of each corporation, the aggregate amount provided during the previous fiscal year to all the directors, and all the officers who are not employees, of the co-operative and its subsidiaries

(a) as remuneration, and

(b) separately, as reimbursement or allowance for expenses incurred on the business and affairs of the co-operative and subsidiaries,

(2) the aggregate amounts of loans referred to in section ( ) in respect of which the repayment of principal or interest, as of the end of the previous fiscal year, is overdue by 45 days or more,

(3) the amount of loans outstanding to each subsidiary and affiliate at the end of the previous fiscal year,

(4) the amount of guarantees outstanding in favour of each subsidiary and affiliate at that date, and

(5) any other information that is prescribed.

(B) - AUDIT

Current Provisions

The CSA contains limited reference to the manner in which the external auditor must report to the general membership of a co-operative and the kinds of information which should be disclosed as part of the audit. There are no references made about the removal of an external auditor, the rights of the auditor to appeal removal, nor on the right to attend all meetings of the membership or of any existing internal Audit Committee. There are no requirements for the filing of management letters.

New Act: Provisions and Issues

The new Act should prevent the removal of the auditors without just cause. New provisions should include the right of an auditor to receive notice of and to attend meetings of the membership. The auditor should have the right and the responsibility to report to the membership on all matters pertaining to the auditor's duties. Auditors should be required to provide co-operatives with a management letter that is to include:

* statements on the adequacy of internal control measures adopted by the co-operative;

* comments on any corrective measures being undertaken by the co-operative in response to identified deficiencies;

* the identification of legislative contravention by the co-operative discovered by the auditor during the course of the audit.

Topics For Discussion

1. Should the CA establish measures dealing with the the removal of external auditors without just cause?

2. Should auditors be allowed to challenge their removal and appeal to the general membership?

3. Would the interests of the general membership be best served by specifying the rights and responsibilities of the external auditor in the performance of their duties?

Model Statutory Language

Appointment and termination of office of auditor

a. A large co-operative shall have an auditor.

b. A small co-operative shall have an auditor unless there is in force an ordinary resolution of the co-operative specifying that it is not to have an auditor.

c. Where a vacancy in the office of auditor exists, the board shall, after taking into account the recommendations of the audit committee under section ( ), by resolution appoint an auditor for the co-operative.

d. The co-operative shall forthwith give the Registrar written notice of the removal, resignation or other termination of office of the auditor, with the reason therefor.

e. The Corporation may, with the prior approval of the Registrar, remove the auditor of a co-operative that is under supervision or administration on giving written notice to the co-operative, the supervisor or administrator and that auditor, and may appoint a person qualified under section [] to act as auditor.

f. The board of a co-operative that has an auditor appointed under subsection (e) shall not appoint an auditor with effect from any date falling within the term of the appointment under subsection (e).

(C) - EXAMINATION, SPECIAL EXAMINATION AND REVIEW

Current Provisions

Although there are provisions for the performance of inspections or examinations by the Registrar and the staff, the scope and nature of the examinations are not specified.

New Act: Provisions and Issues

The CA should clarify and define the examination powers of the Registrar.

Topics For Discussion

Is there a need for any examinations or inspections by the Registrar to ensure compliance to the Act?

Model Statutory Language

Special examination

a. The Registrar may, where he considers that

   i. the business or affairs of a co-operative or of a subsidiary, or any aspect of them, require investigation in order to safeguard the interests of the co-operative's members, customers or creditors or the assets of the co-operative or of a subsidiary, or

   ii. the co-operative or a subsidiary may have contravened any provision of this Act or the regulations, order that a special examination be made of that matter, as specified in the order, by a special examiner appointed by the Registrar.

b. The special examiner shall, on being so ordered by the Registrar,

   i. make the written report required by the order, and

   ii. produce a copy of the report to any person specified in the order.

PART 5 - FUNDAMENTAL CHANGES AND AMALGAMATION

DIVISION 1 - AMENDMENT ARTICLES

Current Provisions

The CSA Regulations makes provisions for the amendment or replacement of a co-operative constitution.

New Act: Provisions and Issues

The CA should provide for the amending or replacement of articles of incorporation, what now is called the constitution. This does not represent a major change from the current legislation.

Topics For Discussion

There will need to be major changes to the existing constitution and incorporation approach. Newfoundland is the only Province which uses the current constitution style, one which embodies the articles of incorporation and by-laws in the same document. Many of the items currently contained in the constitution should be placed in the legislation itself. This approach will be similar to that used by co-operatives in other jurisdictions and by incorporated bodies under corporation legislation.

Model Statutory Language

Change in articles

a. Every extra-provincial co-operative and every corporation registered pursuant to this Act shall send to the registrar, together with the prescribed fee, a copy of any amendment to its articles within 30 days of the date of the amendment,

b. The registrar may issue a certificate with respect to an amendment mentioned in subsection (1) in any form he considers appropriate and may publish a notice of the amendment in the Gazette.

DIVISION 2 - AMALGAMATION

Current Provisions

The existing amalgamation procedures require each affected co-operative to hold two membership meetings. The first is designed to introduce and discuss the amalgamation resolution. The second meeting is designed to reconfirm the decisions of the first meeting. Once approved by the membership, amalgamation need only be approved by the Registrar.

New Act: Provisions and Issues

Provisions should be made for amalgamation or mergers between two or more co-operatives.

Topics For Discussion

The new ratification of amalgamation provisions should be more streamlined in that only one membership meeting will be required.

Model Statutory Language

Amalgamation agreement

a. Each co-operative and corporation proposing to amalgamate shall enter into an agreement setting out the terms and means of effecting the amalgamation, including:

   i. the provisions that are required to be included in articles of incorporation pursuant to section ( );

   ii. the name and address of each proposed director of the amalgamated co-operative;

   iii. the manner in which the shares or memberships of each amalgamating co-operative or corporation are to be converted into shares or memberships or other securities of the amalgamated co-operative;

   iv. where shares of an amalgamating co-operative or corporation are not to be converted into securities or memberships of the amalgamated co-operative, the amount of money or securities of any body corporate that the holders of those shares are to receive instead of securities of the amalgamated co-operative;

v. the manner of payment of money instead of the issue of fractional shares of the amalgamated co-operative or of any other body corporate the securities of which are to be received in the amalgamation;

vi. whether the bylaws of the amalgamated co-operative are to be those of one of the amalgamated co-operatives and, where not, a copy of the proposed bylaws; and

vii. details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated co-operative,

b. Where shares of one of the amalgamating co-operatives or corporations are held by or on behalf of another of the amalgamating co-operatives or corporations:

i. the amalgamation agreement is required to provide for the cancellation of those shares when the amalgamation becomes effective without any repayment of capital in respect of those shares; and

ii. no provision is to be made in the agreement for the conversion of those shares into shares of the amalgamated co-operative.

DIVISION 3 - CONTINUANCE

Current Provisions

Although amended numerous times since 1939, the CSA is the first piece of legislation for co-operatives in the Province. Consequently, there was never a need to make provision for the issuance of Certificates of Continuance.

New Act: Provisions and Issues

The CA will provide a mechanism for the continuance of a co-operative's body corporate status where a co-operative was incorporated under the CSA.

Topics For Discussion

Continuance is simply a mechanism to facilitate the transfer of co-operative administrative processes from the old legislation to the new.

Model Statutory Language

Continuance in Newfoundland

a. A body corporate may apply to the registrar for a certificate of continuance where:

   i. in the case of an extra-provincial co-operative, it is authorized to do so by the laws of the jurisdiction where it is incorporated; or

   ii. in the case of another body corporate:

      (1) it is authorized to do so by the Act pursuant to which it was incorporated; and

      (2) in the opinion of the registrar, it will be operated on a co-operative basis or on a basis that is substantially similar to a co-operative basis,

b. A body corporate that applies for a certificate of continuance pursuant to subsection ( ) may effect in its articles of continuance any change or amendment to its articles, where the change or amendment is a change or amendment a co-operative incorporated pursuant to this Act may make to its articles,

c. A body corporate that applies for a certificate of continuance shall send articles of continuance in the prescribed form and bylaws to the registrar,

d. Where the registrar receives articles of continuance and bylaws pursuant to subsection ( ) and is satisfied that all the requirements of this Act are met, he may issue a certificate of continuance in accordance with section 279,

e. On the date shown in the certificate of continuance issued pursuant to subsection ( ):

   i. the body corporate becomes a co-operative to which this Act applies as if it had been incorporated under this Act;

   ii. the articles of continuance are deemed to be the articles of incorporation of the continued co-operative;

   iii. the certificate of continuance is deemed to be the certificate of incorporation of the continued co-operative; and

   iv. the articles and bylaws of the body corporate in effect prior to the date shown in the certificate of continuance do not apply,

f. In the case of a body corporate mentioned in clause (1)(a) and when the registrar issues a certificate of continuance to it, he shall at the same time send a copy of the certificate of continuance to the appropriate official or public body in the jurisdiction in which continuance under this Act was authorized,

g. When a body corporate is continued as a co-operative under this Act:

   i. the property of the body corporate continues to be the property of the co-operative;

   ii. the co-operative continues to be liable for the obligations of the body corporate;

   iii. an existing cause of action, claim or liability to prosecution is deemed not to be affected;

   iv. a civil, criminal or administrative action or proceeding pending by or against the body corporate may be continued by or against the co-operative; and

v. a conviction against or ruling, order or judgment in favour of or against the body corporate may be enforced by or against the co-operative,

h. A share of a body corporate issued before the body corporate was continued under this Act is deemed to have been issued in compliance with this Act and with the provisions of the articles of continuance regardless of:

i. whether the share is fully paid; and

ii. any designation, rights, privileges, restrictions or conditions set out on or referred to in the certificate representing the share,

i. Continuance of a body corporate as a co-operative pursuant to this section does not:

i. deprive a shareholder of any right or privilege that he claims under; or

ii. relieve a shareholder of any liability with respect to;

an issued share.

PART 6 - RECEIVERS AND WINDING UP

DIVISION 1 - RECEIVERS AND RECEIVER-MANAGERS

Current Provisions

The CSA does not make provisions for the appointment of Receivers or Receiver-Managers. There are, however, provisions for the appointment of an Administrator whose powers are somewhat similar to that of a Receiver-Manager. While a co-operative is in receivership or under administration the Board of Directors ceases to have any authority.

New Act: Provisions and Issues

After a special audit or examination, the Registrar may deem it necessary to appoint a Receiver or a Receiver-Manager to protect the interests of the members. A Receiver should have the power to receive income and pay outstanding liabilities related to the co-operative's operations and the power to realize the security interests of those on whose behalf the Receiver is appointed. The Receiver-Manager, on the other hand, should be authorized to carry on the business of the co-operative for as long as it is deemed necessary. Detailed provisions should be made outlining the conduct required of a Receiver and should be a reference point for the courts if a Receiver or a Receiver-Manager is appointed by the court.

Topics For Discussion

These are standard provisions in co-operatives or corporations legislation.

Model Statutory Language

Functions of receiver

a. Subject to the rights of secured creditors, a receiver of any property of a co-operative may:

   i. receive the income from the property and pay the liabilities connected with the property; and

ii. realize the security interest of those on whose behalf he is appointed,

b. Notwithstanding subsection ( ) and subject to any order that the court may make pursuant to section ( ), a receiver who is not appointed manager of the co-operative shall not carry on the business of the co-operative.

Functions of receiver-manager

a. Notwithstanding section ( ), where a receiver of a co-operative is also appointed manager of the co-operative, he may carry on any business of the co-operative to protect the security interest of those on whose behalf he is appointed.

Directors' powers cease

a. Where a receiver or receiver-manager is appointed by a court or the registrar or pursuant to an instrument, no directors of the co-operative shall exercise the directors' powers that the receiver or receiver-manager is authorized to exercise until the receiver or receiver-manager is discharged.

DIVISION 2 - DISSOLUTION AND LIQUIDATION

Current Provisions

The CSA contains provisions for voluntary wind-up of a co-operative by its membership and for the involuntary wind-up or cancellation by the Registrar. There are no references concerning applications to the court by the Registrar, nor to the powers of the court with respect to the process or conditions of a liquidation, nor to the ranking of claims to be settled in a liquidation.

New Act: Provisions and Issues

The CA should allow for the voluntary dissolution or liquidation of a co-operative under a number of circumstances, subject to the approval of the Registrar of Co-operatives. Approval should be given provided that the co-operative can demonstrate to the Registrar that it should be able to discharge all of its outstanding obligations prior to the dissolution and that such dissolution is in the best interest of the co-operative and its members.

Where a co-operative is inactive and has not carried on business for a period of at least six consecutive months, or if its membership has fallen below the minimum number required by legislation, the Registrar may place that co-operative into involuntary dissolution and appoint a liquidator. The provision should also be made for the Registrar to apply to the court for an order to dissolve or liquidate a co-operative for specific and fundamental violations of the legislation or where a co-operative is not fulfilling the purposes and objectives for which it was incorporated. The powers of the court, where such action is necessary, should be outlined in the CA.

The Act should contain detailed provisions for the duties and powers of the liquidator and should make reference to the ranking of claims to be settled during the liquidation process.

Topics For Discussion

The only major departure from the existing legislation's practice of dissolution and wind-up lies with the CA proposal for the inclusion of comprehensive provisions for liquidation and the powers of the court.

Model Statutory Language

Dissolution by court order

a. The registrar or an interested person may, after giving the co-operative three months notice of the proposed application, apply to a court for an order dissolving a co-operative, where the co-operative:

   i. obtained its incorporation by fraud or mistake;

   ii. exists for an illegal purpose;

   iii. has wilfully, after notice by the registrar, violated any of the provisions of this Act or its bylaws;

   iv. is no longer operating on a co-operative basis; or

   v. has the number of its members reduced below the minimum number required in this Act for the incorporation of the co-operative,

b. Where an interested person applies pursuant to this section, he shall give the registrar notice of his application and the registrar is entitled to appear and be heard in person or by counsel,

c. Where the court receives an application pursuant to this section, it may order that the co-operative be dissolved or liquidated and dissolved under the supervision of the registrar,

d. Where the registrar receives an order made pursuant to subsection ( ), he shall:

   i. where the order is to dissolve the co-operative, issue a certificate of dissolution in the prescribed form in accordance with section ( ); or

   ii. where the order is to liquidate and dissolve the co-operative under the supervision of the registrar, publish a notice in the Gazette.

PART 7 - PARTICULAR SITUATIONS

The new legislation should recognize that some types of co-operatives have special organizational, financial, and legal requirements which cannot be adequately addressed in the common or general Parts of the legislation. It is, therefor, suggested that these "uncommon" requirements be dealt with in a special Part.

DIVISION 1 - CONSUMERS CO-OPERATIVES

Current Provisions

There is no clear definition of a "consumers Co-operative" nor any specific restriction on the number of employees of a co-operative who may serve on the Board employeeing them. Although there is a 5% reserve requirement on all co-operatives, there is no provision for a ceiling on the reserves.

New Act: Provisions and Issues

The new Act will provide a clear definition of a "consumers co-operative." There will be a restriction on the number of employees who may be directors of a consumer co-operative they work for, e.g., no more than one-third of its Directors. Provision will also be made for mandatory reserves of 5% of any surplus earnings (annually) and for increases from revaluation of assets. A co-operative may not be required to allocate the reserves once the total reserves reach 10% of total assets.

Topics For Discussion

Should there be a maximum number of employees who can sit on a Board of a consumers co-operative? Should the Act place a ceiling on statutory reserves, and is 10% enough?

Model Statutory Language

a. In this Part, "consumers' co-operative" means a co-operative incorporated, continued or registered pursuant to this Act whose primary purpose is to

purchase, procure, process, manufacture, exchange, hire and deal in goods or services for sale at retail to its members and patrons who are to be the ultimate users or consumers of those goods or services.

Application of Part

b. This Part applies to every co-operative that is organized or operated as a consumers' co-op.

Restriction on directorships

c. Subject to subsection ( ), no employee of a consumers' co-operative may be a director of the co-operative,

d. A co-operative may provide in its bylaws that no more than one third of its directors may be employees.

DIVISION 2 - COMMUNITY SERVICE ASSOCIATIONS

Current Provisions

The CSA makes no specific reference or provision for this type of co-operative.

New Act: Provisions and Issues

The CA will provide for, and define, a form of co-operative which is organized to provide services for the benefit of the public or general welfare of the community. In this type of co-operative the word "Limited" does not have to be used in its name, interest will not be paid on share capital, and surplus earnings must be used for either reserves, or expansion of services, or donated to charitable causes.

Topics For Discussion

At this time, there are two co-operatives organized for community service along similar lines proposed in the New Act. There are no clear guidelines, however, for dealing with surplus earnings and eventual disposition. Is there a need for community service associations which have the status of a co-operative and should the legislation make specific provisions for them?

Model Statutory Language

Community Service Association

a. In this Part, "community service association" means a co-operative that is incorporated, continued or registered pursuant to this Act whose primary purpose is to carry on activities or to provide services that are primarily for the benefit of the public or the general welfare of the community.

DIVISION 3 - HOUSING CO-OPERATIVES

Current Provisions

The CSA does not contain any specific provisions relating to the matters proposed in the new CA.

New Act: Provisions and Issues

The CA could contain detailed provisions relating to:

(1) a clear definition of a housing co-operative;

(2) the relationship of the housing co-operative to its members;

(3) its non-profit status;

(4) the non-applicability of Landlord Tenant Legislation to housing co-operatives; and

(5) matters dealing with setting of charges, gaining possession of units, abandoned goods, etc.

These provisions will reflect the legislative environment existing or being proposed in other jurisdictions.

Topics For Discussion

Is there a need for special provisions for housing co-operatives in new legislation, or could these issues be adequately covered by existing provincial landlord/tenant legislation? Have housing co-operative, in this Province, encountered any difficulties, organizational or legal, which necessitates further remedy or protection in co-operatives legislation?

Model Statutory Language

Definitions

a. In this Part:

i. "co-operative" has the meaning given to it by this Act and includes housing co-operative;

ii. "housing co-operative" means a co-operative which has as its purpose the provision of residential housing accommodation on a non-profit basis to persons the majority of whom are members of the co-operative and who are ordinarily resident in the accommodation and which co-operative's articles provide that:

(i) the co-operative shall be subject to this Part;

(ii) its activities are to be carried on without the purpose of gain for its members; and

(iii) on dissolution, its property after payment of its debts and liabilities shall be distributed to either non-profit or charitable organizations.

iii. "housing charges" means the fee, other than membership fees, charged by a housing co-operative to its members;

iv. "housing unit" means housing accommodation intended for residential use;

v. "joint shareholder" means a person who is one of two or more persons who jointly hold shares in a housing cooperative and "joint member" has the same meaning.

DIVISION 4 - WORKER CO-OPERATIVES

Current Provisions

There are no special provisions for worker or employee co-operatives in the CSA.

New Act: Provisions and Issues

The new legislation should provide a clear definition of what constitutes a workers co-operative and a provision which requires the majority of workers or employees to be members of the co-operative. There will be restrictions on the amount of work which may be contracted out. Provision will also be made for the distribution of surplus earnings based on labour and that the majority of the directors be employees.

Topics For Discussion

It is a largely held view that workers co-operatives are uniquely different from other co-operatives, and, so, require special consideration in legislation. Extensive research has determined the need for legislative harmony accross the country to remove barriers or obstacles preventing the development of worker co-operatives. There are efforts underway, currently, by Federal and Provincial governments, and the Co-operative Systems, to devise a national strategy on this issue. Is this position relevant to the Newfoundland and Labrador context, and if so, what provisions should be contained in our legislation? Should there be restrictions on contracting out? Should all members of employee co-operatives be employees?

Model Statutory Language

Interpretation

a. In this Part, "workers co-operative" means a co-operative that is incorporated, continued or registered pursuant to this Act whose primary purpose is to operate an enterprise in which its members are the workers necessary for the operation.

Patronage dividends based on labour

b. Notwithstanding section [], where an workers co-operative allocates among and credits or pays to its members a patronage dividend, the directors may decide to allocate the patronage dividend by taking into account the labour contribution of each member.

DIVISION 5 - COMMUNITY CLINICS

Current Provisions

There are none in the existing CSA.

New Act: Provisions and Issues

The CA will provide for the formation of community health clinics on a co-operative basis.

Topics For Discussion

Is the whole issue of health care co-operatives relevant to this Province, given our present health care system? Is it necessary to make provision for a form of co-operative which does not yet exist nor may not exist for years to come? Conversely, should new enabling legislation provide for an idea which is currently being examined closely across the country as an option or alternative in combating rising health care costs?

Model Statutory Language

a. In this Part:

i. "community clinic" means a co-operative incorporated, continued or registered pursuant to this Act whose primary objectives are:

(1) to promote a scheme of providing health or hospital services to its members and their dependants on a mutual benefit plan;

(2) to establish, maintain and operate facilities for group medical practice of duly qualified medical practitioners;

(3) to establish, maintain and operate facilities for health care; or

(4) to encourge and provide financial assistance for medical research in the community;

ii. "health services" includes services provided by a licensed medical practioner or dentist, a registered nurse or any other qualified person and the furnishing of health appliances, optical and pharmaceutical supplies;

iii. "hospital services" includes services provided by hospitals approved under any Hospital Standards Act or by nursing homes.

PART 8 - CO-OPERATIVE FEDERATIONS AND CENTRALS

DIVISION 1 - NEWFOUNDLAND AND LABRADOR FEDERATION OF CO-OPERATIVES LTD.

Current Provisions

The CSA gives special status to the NLFC as the primary representative body for co-operatives, but also provides for the creation of asscoiations comprised of other co-operatives. There are no provisions for compulsory membership assessments, nor is there any authority for inspections and examinations.

New Act: Provisions and Issues

The new CA will continue to provide for the establishmant of the Newfoundland and Labrador Federation of Co-operatives (NLFC) and also for the formation of co-operatives whose membership is comprised entirely of other incorporated co-operatives. It is suggested that the Act should provide for mandatory or compulsory membership and/or assessments to ensure the continuity of the NLFC as the primary representative body of co-operatives in the Province.

Provisions should also be made for examination of the NLFC and other co-operative associations, and for placing them under supervision or administration, if it is deemed that the affairs and business activities of the organizations are being conducted in an unsound manner.

Topics For Discussion

Should there be only one central organization representing all co-operatives? Should membership and assessment fees be manadatory? Will the democratic rights of co-operatives be infringed upon if the legislation denies them the opportunity to form other associations or federations to represent special interests or needs?

Model Statutory Language

i. "federation" means a co-operative whose membership is composed entirely of other co-operatives;

PART 9 - MISCELLANEOUS

DIVISION 1 - GENERAL

Current Provisions

The CSA does not contain a particular section relating to miscellaneous documentation but rather addresses it throughout the Act and the Regulations.

New Act: Provisions and Issues

The CA should contain a miscellaneous section to provide for minor administrative matters relating to the execution and filing of documentation not already provided for in other sections of the Act.

Model Statutory Language

Copies of documents

a. Where a notice or document is required to be sent to the registrar pursuant to this Act, the registrar may accept a photostatic or photographic copy of the notice or document.

Alteration

b. Where the registrar is authorized by the person who sent a notice or document or his representative, he may alter the notice or document, but he shall not alter an affidavit or statutory declaration.

Corrections

c. Where a certificate containing an error is issued to a co-operative by the registrar, the directors or members of the co-operative shall, on the request of the registrar:

   i. pass the resolutions and send to him the documents required to comply with this Act; and

   ii. take any other steps that he may require;

   and the registrar may demand the surrender of the certificate and issue a corrected certificate.

d. A certificate corrected pursuant to subsection (1) is required to bear the date of the certificate it replaces.

e. Where a corrected certificate issued pursuant to subsection (1) materially amends, in the opinion of the registrar, the terms of the original certificate, the registrar shall give notice of the correction in the Gazette.

DIVISION 2 - REGULATIONS

Current Provisions

The CSA provides for the creation of regulations for those items which are subject to periodic change.

New Act: Provisions and Issues

The Act should provide for the enactment of a broad range of regulations by the Lieutenant Governor in Council with respect to all issues not dealt with specifically in the Act. Provision should also be made for Ministerial regulations for those legislative issues which directly involve the Minister and the Minister's approval.

Model Statutory Language

Lieutenant Governor in Council regulations

a. The Lieutenant Governor in Council may make regulations

i. prescribing fees and charges payable for services rendered and documents provided by or on behalf of the Minister under this Act and the regulations and respecting the imposition by the Corporation of fees and charges for services rendered by or on behalf of the Corporation to specific co-operatives that are not to be paid for from the general resources of the Corporation;

ii. authorizing the creation of shares, other than common shares, to be issued by co-operatives or Central or shares to be issued by the Corporation or its subsidiaries, and, in respect of any such shares, including any class of, or any series in a class of, such shares,

(1) respecting their creation, issue, sale, redemption, retraction, transfer, registration, transmission and delivery and the attached rights, privileges, restrictions and conditions,

(2) respecting the minimum amounts to be received by the corporation,

(3) governing the maximum number that may be held by any holder of the shares,

(4) governing the rights, duties and obligations of the corporation, and

(5) respecting the extent to which they are subject to this Act or the regulations or any other enactment;

iii. establishing further related party provisions;

(1) respecting the protection of customers and the public in their dealings with co-operatives, including the making of representations by co-operatives to them;

(2) respecting the confidentiality of information where co-operatives offer for sale the products of financial institutions;

(b) respecting the disclosure of co-operatives' service charges;

(c) requiring directors of co-operatives to meet requirements respecting their training;

(d) respecting the application of provisions of this Act, or similar provisions, to partnerships and joint ventures involving co-operatives or federations or to relationships between co-operatives or federations and any such partnerships or joint ventures;

(e) prescribing any matter or thing that by this Act may or is to be prescribed by the Lieutenant Governor in Council.

Ministerial regulations

a. The Minister may make regulations

i. respecting the execution, certification, proof, authentication and alteration of documents relating to this Act or any of their contents, the issue of and the correction of errors in certificates, the registration system and process and other matters relating to the administration of this Act;

ii. requiring approval by the Minister financial estimates, imposing conditions in relation to its financial estimates and expenditures and providing for examinations of, and otherwise respecting, its management and management practices;

iii. prescribing any matter or thing that by this Act may or is to be prescribed by the Minister.

PART 10 - REPEAL, COMMENCEMENT AND SOME SET PROVISIONS

New Act: Provisions and Issues

With the proclamation of a CA, the CSA should be repealed.

PART 11 - TRANSITIONAL

DIVISION 1 - TRANSITIONAL

New Act: Provisions and Issues

With the enactment of the CA, all existing co-operatives should be required to apply for a "Certificate of Continuance" within a two to three year period, in order to maintain its corporate standing. Because the CA will most certainly have a number of membership, equity and other requirements substantially different from those presently required by the CSA, there may be different periods of time given to allow co-operativess and their members to comply with the new sections.

Topics For Discussion

The new Co-operative legislation should be substantially different, not only in form, but in substance as well, from the existing CSA. A reasonable period of time should be established to allow the co-operatives to comply with all of the provisions of the CA.

Model Statutory Language

Articles of continuance and by-laws

a. An existing co-operative shall, before Janvuary 1, 199_ provide to the Registrar articles of continuance and new by-laws, executed by the co-operative, and a notice containing the address of its registered office.

b. The constitution and regulations of an existing co-operative, as they were immediately before _____ and as subsequently amended under this Act, shall be deemed to be its articles of continuance and by-laws until the articles of continuance and by-laws provided under subsection ( ) are registered.

c. Notwithstanding subsection ( ), any provision of the existing constitution or rules of an existing co-operative that is inconsistent with this Act or the regulations is invalid to the extent of the inconsistency.

d. The articles of continuance must set out, in respect of the existing co-operative, the matters described in section ( ).

e. On the provision of the articles of continuance and the by-laws under subsection ( ), the Registrar shall, if he considers that they are in accordance with this Act and the regulations, register them, whereupon they become the articles of continuance and by-laws of the co-operative and replace its constitution and rules referred to in subsection ( ), and the Registrar shall also register the notice of registered office.

f. On registering the articles of continuance, the Registrar shall issue to the co-operative a certificate of continuance.

g. If an existing co-operative fails to comply with subsection (1),

   i. the Registrar may dissolve or liquidate and dissolve the co-operative and the Registrar may issue a certificate of dissolution in respect of the co-operative without complying with any provisions of Part ( ), and

   ii. the co-operative becomes in need of assistance for the purposes of section ( ).

h. This section applies notwithstanding the requirement of articles and a certificate of continuance in section ().